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Docket No. TSCA-07-2004-0077

Respondents

Introduction

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), is the Chief, Radiation, Asbestos, Lead & Indoor Programs Branch, EPA, Region 7. The Respondents are Garland Gray and Amatha Gray, 420 Cypress Avenue, Kansas City, Missouri 64124.

Complainant's Allegations

Complainant has reason to believe that Respondents have violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Specifically, Complainant alleges:

Count I

1. Garland Gray and Amatha Gray ("Respondents") are individual persons.
2. For all periods of time relevant to the violation alleged herein, Respondents owned a residential property located at 2738 Chelsea, Kansas City, Missouri (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. On or about December 1, 2002, Respondents entered into a rental agreement (the "Contract") with Elizabeth Waite and Brian Neighbors for the lease of Respondents' Property for residential use.
6. As a result of the Contract described in Paragraph 5 above, Respondents became the "lessors," and Elizabeth Waite and Brian Neighbors became the "lessees," as those terms are defined by 40 C.F.R. § 745.103.
7. Elizabeth Waite and Brian Neighbors subsequently moved into the Property along with two children.
8. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

9. Respondents did not provide an EPA-approved lead hazard information pamphlet to Elizabeth Waite and Brian Neighbors prior to being obligated under the Contract described in Paragraph 5 above.

10. Respondents' failure to provide an EPA-approved lead hazard information pamphlet to Elizabeth Waite and Brian Neighbors prior to being obligated under the Contract described in Paragraph 5 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondents admit that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admit nor deny Complainant's factual allegations above.

2. Respondents waive their right to contest Complainant's allegations above, and their right to appeal the Final Order accompanying this Consent Agreement.

3. Respondents and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a civil penalty in the amount of Five Hundred Dollars (\$500) to be paid within forty-five (45) days of the effective date of the Final Order.

6. Respondents understand that their failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to

recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently two percent (2%) per annum for the period January 1, 2003, through December 31, 2003) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondents shall pay a civil penalty of Five Hundred Dollars (\$500) due within forty-five (45) days of the effective date of the Final Order. Such payment shall identify the Respondents by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency, Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Deanna Smith
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondents and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENTS:
GARLAND GRAY AND AMATHA GRAY

Date Dec 19, 2003

By Garland Gray
Garland Gray

Date Dec 19, 2003

By Amatha Gray
Amatha Gray

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 1/8/04

By Lynn M. Slugatz
Lynn M. Slugatz
Acting Branch Chief
Radiation, Asbestos, Lead & Indoor Programs Branch

Date 1/9/04

By Becky Ingrum Dolph
Becky Ingrum Dolph
Deputy Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.

Robert L. Patrick

Robert L. Patrick
Regional Judicial Officer

Date January 12, 2004

IN THE MATTER OF Garland Gray and Amatha Gray, Respondents
Docket No. TSCA-07-2004-0077

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Becky Ingrum Dolph
Deputy Regional Counsel
Regulatory Programs
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Garland Gray and Amatha Gray
420 Cypress Avenue
Kansas City, Missouri 64124

Dated: 1/12/04


Kathy Robinson
Regional Hearing Clerk